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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/297,237 | 05/17/1999 | HARTMUT EICHINGER | | 9458 |

7590 12/20/2001

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EXAMINER

CHAVEZ, PATRICK J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3635

DATE MAILED: 12/20/2001

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/297,237

Applicant(s)
Elchinger

Examiner
Patrick J. Chavez

Art Unit
3635



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Dec 13, 2001

2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 20-31 is/are pending in the applica

4a) Of the above, claim(s) _____ is/are withdrawn from considera

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 20-31 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirem

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☒ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____

3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 12

20) ☐ Other:

Art Unit: 3635

DETAILED ACTION

Continued Prosecution Application

1. The request filed on December 13, 2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/297237 is acceptable and a CPA has been established. An action on the CPA follows.

Response to Arguments

2. Applicant's arguments filed December 13, 2001 have been fully considered but they are not persuasive. Please see the action below.

Claim Rejections - 35 USC § 102

Claims 20, 25-26 and 28-31 stand rejected under 35 U.S.C. 102(b) as being anticipated by O'Brian et al. (US Patent 4,365,799).

As stated in paper no. 11, in Figure 5, O'Brian teaches of a play structure comprising: vertical plate like supporting posts, 20 and 22, having vertical stops or locking elements, 34, 30 and 98, with recesses provided at these plug connections; a side rail, 136, on the top side of the slab; and a roof, 96, affixed to said supporting posts; said roof being a self-supporting slab resting in a horizontal direction. Also disclosed is a fastening device, 108, on the base or edge of

Art Unit: 3635

the slab. Figure 6 reveals a guide rail as part of the fastening hinge, 108, placed on the underside of the slab, 106.

In regards to claim 26, the cited reference embodies supporting posts, 98, which have a length exceeding a distance as measured from said roof, 96, to a floor level, and having a recess, 104, into which said self-supporting slab is capable of being inserted.

In regards to applicant's arguments filed December 13, 2001, the Examiner is interpreting the limitation "playhouse" to be a structure in which children recreate. Figure 5 shows a space under the roof/platform in which children can seek shelter, play, etc. While the play structure is not a housing structure in the traditional sense, the covered provided by member 96 would serve as a roof to a child playing under the structure, or alternatively, as a platform to a child walking on top of member 96. Therefore, the Examiner contends that to the extent children use a playhouse, the horizontal member, 96, is the structural equivalent to a roof and/or platform.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 22-23 and 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brian et al.

O'Brian discloses a play structure as discussed above, but does not teach of the self-supporting slab to be shaped as a hexagon or a half-hexagon. In light of the specification, no

Art Unit: 3635

level of criticality is established for the hexagonal shape. The Examiner contends that the structure would preform identically with a slab shape other than instantly claimed. As such, the desired slab shape would be a design option to one having ordinary skill in the art.

In regards to claim 27, O'Brian discloses the claim invention except for the vertical plate-like bodies material composition. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select straw with a binding agent as the material for the vertical plate-like bodies, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Straw with a binding agent has routinely been selected as an adequate building material for structural members.

5. Claim 21 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brian in view of Ahrens (US Patent 4,447,055).

O'Brian discloses a play structure as discussed above, but does not teach of a self-supporting slab comprising a cover plate which rests upon a level framework. In Figures 1 and 2, Ahrens teaches of a play structure with a cover plate, 12, which rests upon a frame, 32. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the use of a framework, such as that of Ahrens, with O'Brian's invention so as to provide a more rigid and secure slab structure. Figure 6 of O'Brian's disclosure reveals some usage of such a cover plate/frame assembly, thus making it obvious to combine the teaching's of Ahrens.

Art Unit: 3635

6. Claim 24 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brian in view of Vinson.

O'Brian discloses a play structure as discussed above, but does not teach of said supporting posts having a horizontal cross-section which is bent or curved. While the Examiner considers the particular cross-section selected to be a design choice, the Vinson reference is cited to reinforce the Examiner's position. In Figure 1, Vinson reveals supporting posts, 38, which are bent or curved in cross-section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the play structure of O'Brian with the bent/curved supporting posts of Vinson so as to provide an adequate and alternative design choice.

Conclusion

7. This is a CPA of applicant's earlier Application No. 09/297237. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 3635

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick J. Chavez whose telephone number is (703) 306-5706.



Carl D. Friedman
Supervisory Patent Examiner
Group 3600



PJC

December 14, 2001